

**Oroville Facilities Relicensing  
Federal Energy Regulatory Commission Project No. 2100  
Draft Summary of the Plenary Group Meeting  
December 16, 2003**

The Department of Water Resources hosted a meeting for the Plenary Group on December 16, 2003 in Oroville. A summary of the discussion, decisions made, and action items is provided below. This summary is not intended to be a transcript of the meeting, or to indicate agreement or disagreement with any of the items summarized, except where expressly stated. The intent is to present a summary for interested parties who could not attend the meeting. The following are attachments to this summary.

Attachment 1	Meeting Agenda
Attachment 2	Meeting Attendees
Attachment 3	Meeting Flip Chart Notes
Attachment 4	Process Update
Attachment 5	Land Use, Land Management and Aesthetics Work Group Resource Action Presentation
Attachment 6	Plenary Group Comments on LUWG Resource Action Recommendations
Attachment 7	Environmental Work Group Resource Action Presentation
Attachment 8	Environmental Work Group Resource Action Matrix
Attachment 9	Plenary Group Comments on EWG Presentation
Attachment 10	Understanding the PDEA Presentation
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Attachment 12	Work Group Meeting Abstracts
Attachment 13	Letter from the Butte County Counsel's Office
Attachment 14	Revised Process Protocols

### **Welcome and Introductions**

Attendees were welcomed to the Plenary Group meeting and introduced themselves and their affiliations. The Facilitator reviewed the proposed agenda and desired outcomes for the meeting. The proposed agenda and a list of meeting attendees are appended to this summary as Attachments 1 and 2, respectively. Meeting flip chart notes are included as Attachment 3.

### **Process Update – Settlement and Collaborative Interaction**

Sharon Stohrer representing the State Water Resources Control Board informed participants that SWRCB staff must leave the Plenary Group meeting at 5 p.m. due to State budget cuts. She requested the meeting be conducted in a concise manner and suggested that future involvement by State agencies may be impacted by pending budget cuts.

Rick Ramirez representing DWR noted the smaller meeting site and asked DWR and its consultant team to be seated at the back of the room, allowing other stakeholders the opportunity to be seated at the table. Participants were reminded that DWR's headquarters office has meeting facilities available that would accommodate large groups and allow for call-in capability. Eric Theiss with NOAA Fisheries added that their Sacramento office has a large conference room with video conferencing capabilities available to the Plenary Group if the collaborative is interested.

Rick Ramirez provided an update on where we are in the relicensing process. The presentation is included as Attachment 4. The License Application is due in one year, at which time DWR hopes to submit a Settlement Agreement as well. Rick noted the accomplishments of the collaborative during the last three years and described the steps remaining after application submittal on January 31, 2005. Between January 2005 and January 2007, the Federal Energy Regulatory Commission will process information provided by DWR. If not prepared to issue a new license by January 31, 2007, FERC may issue annual licenses until the application is approved. Participants were reminded that while FERC is the lead agency for the National Environmental Policy Act document, DWR is the lead agency for the California Environmental Quality Act document.

Rick described the importance of the settlement negotiation process and indicated that while there may be some issues not fully studied before the process begins, DWR believes its study package will provide all the necessary information to FERC. If not, DWR will submit a Supplemental Information Package. Michael Pierce representing Butte County asked if the work groups would have input into the Supplemental Information Package. Ralph Torres with DWR responded that it would depend on the information requested.

DWR anticipates that the Settlement Group will request technical information from the work groups and refine the resource actions as needed to negotiate an agreement. Rick added that specifics on how the Settlement Group and the collaborative work groups will interact have yet to be developed. Ground rules for the settlement participants will be developed at the group's "kick-off" meeting.

Rick explained that the Plenary Group has begun receiving proposed resource action recommendations from the work groups and would forward these recommendations to DWR and the Preliminary Draft Environmental Assessment team for further analysis. In turn, PDEA team updates will be provided to the Plenary Group as well as progress reports from the Settlement Group.

Patrick Porgans representing JEM Farms read a passage from the October 28, 2003 Plenary Group meeting notes regarding whether the Plenary Group has a decision-making role on RAs or the PDEA. During the October 28 meeting, Rick said the Process Protocols did not give the Plenary Group an approval role for RAs. Patrick asked what role the Plenary Group will have in RAs. Sharon Stohrer asked if the Plenary or Settlement Group would determine what the desired protection, mitigation and enhancement measures should look like in the PDEA. Rick replied that the Settlement Group would refine the RAs as negotiations proceed. He added that the Plenary Group and Settlement Group would essentially become one as he envisions many of the Plenary Group participants would choose to be part of the Settlement Group. Patrick took exception to the suggestion that the Settlement Group and Plenary Group would be the same since some participants in the Plenary Group are not negotiators and thus would not be Settlement Group participants. Eric Theiss requested DWR clearly describe the process for moving RAs through to settlement, including the role of both the Settlement Group and the Plenary Group at the next Plenary Group meeting. Patrick contended that Rick's description of the Plenary Group role is not consistent with the Initial Information Package prepared by DWR.

Michael Pierce asked where development of the settlement process is taking place. Rick replied that the Process Protocol Task Force initiated the effort and the specifics will likely be completed during the first meetings of the Settlement Group.

## **Work Group Resource Action Presentations**

### *Land Use, Land Management and Aesthetics Work Group*

Jim Martin, the DWR Resource Area Manager for the Land Use, Land Management and Aesthetics Work Group presented the LUWG RA development process and list of recommended RAs for analysis (Attachment 5). Jim included a list of the work group participants and mentioned that additional occasional participants included Native Americans and equestrian/hiker groups. Participants are encouraged to visit DWR's relicensing web site to follow the activities of the LUWG via meeting summaries. Jim described the process the LUWG used to develop and sort submitted RAs. Jim presented a prioritized 'A' list of LUWG RAs recommended to the Plenary Group for further analysis, along with a 'B' list of proposed RAs not recommended for further evaluation, and a list of RAs expected to be discussed at the settlement table. Jim also identified those RAs with potential cross-resource effects. Plenary Group comments on the LUWG RA recommendations were captured on-screen and are provided as Attachment 6 to this summary. John Schlotterbeck with Metropolitan Water District of Southern California asked if the LUWG is going to provide cost estimates on its RAs. Jim indicated they would be providing general information related to costs as available.

Patrick Porgans asked why LWG-29 shown on the "B" list was not recommended for further analysis. Jim Martin responded that the LUWG considered it infeasible and outside the scope of relicensing. Patrick feels it is important because if the lake is below a certain level, it can no longer be used for recreation. Sharon Stohrer suggested that this issue is a good example of why the collaborative needs to develop a flow regime that determines lake levels throughout the year. She asked if the Plenary Group could request that a work group reconsider a particular issue. Rick Ramirez agreed that the Plenary Group could question the recommendations of the work group. Bill Connelly representing the Low Flow Alliance noted that his group submitted this RA and felt that the State Water Contractors had an obligation to initiate water conservation or fund a mitigation bank to compensate Butte County for impacts from lost recreation revenue. He added that the RA should be a part of the settlement discussions. Eric Zigas representing the City of Oroville suggested this issue be addressed in the PDEA and agreed it would be a settlement issue. Sharon Stohrer noted that FERC does not have authority over the operations of the Metropolitan Water District of Southern California; however, they do have some authority over lake levels. She suggested the RA be rewritten to trigger certain actions when a specific lake level is reached.

The Plenary Group discussed whether FERC has the ability to mandate this type of RA. Patrick Porgans noted that the SWC have no water rights, rather contracts that are negotiated for a specific period of time. He also suggested that this issue should be focused on how the Project is operated. Craig Jones representing the SWC informed the Plenary Group of a Recreation and Socioeconomic Work Group study of recreation impacts on lower lake levels through the summer. Craig also explained MWD's aggressive water conservation efforts, some of the most extensive in the country, and suggested interested persons review DWR's Bulletin 160. He feels this is really a water rights issue, and neither FERC nor the SWC would support it. Craig added that this may be an appropriate settlement issue. Mark Andersen with DWR supported Craig's statement about MWD's water conservation efforts. He stated that MWD uses an integrated resource planning tool that looks at water mix/future demands. MWD is forward-looking with respect to recycling opportunities. The Facilitator reminded the group that this action would benefit from ongoing modeling efforts to analyze Project operations. Mike Mainz with the Department of Fish and Game responded that the discussion had become focused on water contracts and away from relicensing of the electrical generation aspect of the hydroelectric project. Michael Pierce responded that the interest is in water levels and their impact on recreation in Oroville. He recognizes that keeping lake levels above 850 feet is unobtainable;

however, he feels this is an appropriate settlement issue. Rick Ramirez suggested that the issue should go back to the LUWG. Craig Jones commented that if the settlement discussion is going to focus on conservation, it should extend to all water right holders including those local users with water rights ahead of the SWC delivery contracts.

#### *Environmental Work Group*

Terry Mills, the DWR Resource Area Manager for the Environmental Work Group gave a presentation to the Plenary Group on the EWG's RA development process and outlined the current status of EWG's RA development (Attachment 7). Terry described the EWG strategy: (1) build on existing efforts, (2) use a transparent process, (3) be open to suggestions, and (4) meet commitments. He said their goal is to be more inclusive than exclusive. Approximately 50 issue sheets were developed to define the RAs. The EWG relied heavily on study plans, information from study leads, and preliminary results from the studies. The EWG is focusing on actions to address effects on fisheries, terrestrial resources, water quality, and geological resources, while considering issues that might affect other resource areas. The EWG created a number of task forces directed to develop RA process recommendations for the EWG to assist in prioritization. The EWG identified five categories to describe the level of information developed for individual RAs. The EWG is currently developing and reviewing narrative reports to further refine the RAs. The narrative reports are threshold decision documents and will be useful during development of the PDEA. Terry explained that individual RAs are being grouped into programs designed to achieve specific resource goals. The programs represent logical groupings of RAs related by type, location and specific issue. The EWG is currently organizing a flow diagram which may illustrate its scope of RAs. Participants were informed that the EWG is not ready to recommend any of the RAs to the Plenary Group at this time; the group continues to work on condensing submitted RAs and expects to move some forward to the Plenary Group in March. A copy of the EWG RA matrix, dated December 12, 2003, is appended to this summary as Attachment 8. Plenary Group comments on the EWG presentation were captured on-screen and are provided as Attachment 9 to this summary.

#### **Understanding the Preliminary Draft Environmental Assessment**

Russ Stein with DWR gave a presentation on the PDEA (Attachment 10). Topics covered in his presentation included: (1) the goal and purpose of the PDEA and related NEPA/CEQA compliance, (2) a history of the PDEA and collaborative efforts, (3) future PDEA efforts, (4) PDEA development, and (5) future and ongoing activities.

The PDEA is part of the draft License Application to be submitted to FERC in spring 2004. Throughout 2004, DWR will develop alternatives based on RA evaluation and settlement discussions. Russ explained that the April 2004 document would not contain a thorough evaluation of the RAs but would provide a roadmap for the 2005 document. Expected content of the April 2004 draft PDEA will include:

- Section 1 – Overall Content
- Section 2 – Purpose and Need
- Section 3 – Development of Proposed Project/Action and Alternatives Description
- Section 4 through 9 – General Descriptions and Roadmaps for Analysis

The January 2005 PDEA will provide material to FERC staff for consideration of proposed Project/actions. Completed studies will be the primary information source. If a settlement

agreement has not been achieved, the document will provide additional information for continued negotiations.

By early 2006, DWR will prepare a draft Environmental Impact Report, which will provide additional material to the public for review and comment. The report will also initiate DWR's request for 401 Certification from the SWRCB.

To date, there are over 400 RAs that DWR must review and prioritize. Narrative reports prepared by the EWG contain the type of information to be included in the PDEA.

Ron Davis asked if the Plenary Group would have an opportunity to react to the alternatives in the PDEA. Russ replied that through the work groups and collaborative process, stakeholders are shaping the RAs that will comprise the alternatives. There will also be at least a 60-day comment period on the PDEA. Ron asked how the PDEA team intends to respond to public comments or questions to the alternatives outlined in the PDEA. Barbara McDonnell with DWR pointed out that if settlement were successful; there would be no reason to include other alternatives in the PDEA. Sharon Stohrer added that this has been a public process and the ideal situation would be for a full settlement agreement with all stakeholders in agreement. If full agreement on all issues is not possible, DWR has the option for a partial settlement package. Sharon indicated that when FERC issues its own environmental assessment on whatever comes from the collaborative process, the public would have another opportunity to comment. If the NEPA document is not adequate under CEQA, there will be further opportunity for public comment once the CEQA document is filed. She asked if DWR intends to formally file the draft License Application with FERC because draft applications are not typically submitted to FERC. Ward Tabor with DWR replied that preparation of a draft application is a requirement of the ALP and a draft would be submitted as a courtesy to FERC staff. Eric Theiss asked how DWR plans to integrate the Endangered Species Act. Russ suggested it would be through the Biological Assessment process. Asked when the BA process would begin, Russ said that Dave Bogener with DWR has been tasked with the BA process and that a request has been made to begin early consultation. He added that it is a parallel, but somewhat separate process.

Eric Zigas asked how the April 2004 draft PDEA relates to the initial offer of settlement. Ralph Torres replied that DWR intends to prepare an initial offer to begin the settlement negotiations and expects it to be available by the end of April 2004.

Michael Pierce asked if members of the collaborative are part of the PDEA team. Russ reminded participants that this is an "applicant prepared" document and the PDEA team is made up of DWR and consultant staff. While no collaborative members are part of the team per se, the team will be using collaborative-developed study plan information and RAs in the PDEA. The Facilitator reminded the Plenary Group that stakeholders would have numerous comment periods to provide additional input.

Patrick Porgans asked if the April 2004 draft PDEA would contain study results. Russ responded that since the studies are not complete, the April 2004 document would provide a roadmap or proposed method on how the study results would be utilized. Study results available at that time will likely become technical appendices. Patrick expressed concern that he could not read all the reports and start settlement negotiations in spring if study plan results will not be available for five months. He explained that he is waiting for results from Study Plan G2 before submitting his RAs; his RAs are going to be based on scientific data and he cannot formulate them without facts. Patrick read aloud a passage from DWR's Initial Information Package, which states, "The Plenary will serve as the forum in which to ultimately decide the Settlement Agreement." Patrick

disagrees with the revised Process Protocols and feels this is no longer a collaborative process. He feels that the Plenary Group rather than the Settlement Group should be making the decisions. He also reported that he asked Jim Fargo with FERC for the code section on confidentiality and indicated that Mr. Fargo could not find it in the ALP process guidelines.

### **Cumulative Effects Analysis Update**

Russ Stein gave a presentation on the Cumulative Effects Assessment for the PDEA. For handouts of his presentation, please refer to Attachment 11. Russ provided the Plenary Group with definitions for direct, indirect, and cumulative effects taken from NEPA, CEQA, and ESA regulations. The given ESA definition was provided by NOAA Fisheries. Russ also provided sample matrices for direct and indirect effects evaluation, as well as for the cumulative effects assessment under NEPA/CEQA.

DWR guidance on cumulative effects was drawn from the Council on Environmental Quality for NEPA, CEQA, FERC, U.S. Fish & Wildlife Service, NOAA Fisheries, Task Force reports and recent literature. John Schlotterbeck clarified that a project with no direct or indirect impact cannot have a cumulative impact. Russ agreed with John and added that the statement is consistent with NEPA and CEQA. Eric Theiss reiterated that NOAA and USFWS do not agree with FERC on the definition of baseline condition for ESA cumulative effects. Russ asked Eric to provide the differences between NOAA and FERC. Eric said he would provide Russ with the contact information for NOAA's Section 7 coordinator for this region. Patrick Porgans supports the position of NOAA and USFWS and feels the end product is not going to be in compliance.

Barbara McDonnell asked agency representatives whether anything in the presentation or approach would raise a red flag. Sharon said DWR has provided the framework and SWRCB is waiting to see the "filler". She added that the SWRCB will be more focused on responding to the EIR, and baseline under the Clean Water Act has not been discussed. According to Sharon, some data may have to be synthesized because historical data is lacking.

Michael Pierce asked whether the guidance document prepared by the Environmental task force would ever be finalized. The Facilitator replied that the task force decided not to revise the document further, and Ward Tabor added that he believes it was a task force consensus not to finalize the document.

Cathy Hodges asked if participants should present alternative RAs to the PDEA team for RAs that were not accepted by the work groups.

The Facilitator reminded the Plenary Group that all lists prepared by the work groups are going to be submitted to the PDEA team and additional RAs might be submitted at the negotiation table. Mark Andersen added that each RA is a "stand alone" proposal, not an alternative; however, it could become part of an alternative.

Michael Pierce asked whether Project impacts to the human community would be considered. Russ responded that such consideration is required under NEPA/CEQA. Cathy Hodges asked if individual stakeholders could communicate with the PDEA team. Ralph Torres said it would be best to go through the work groups. Russ added that stakeholders could contact the PDEA team if their question was process-related.

Mike Mainz informed participants that after the application has been submitted, filing a motion to intervene reserves them a spot in the legal process.

Kevin Zeitler representing ORAC said he did not see any triggers established that would set criteria when future growth requires more recreation facilities, staff, or funding. The Facilitator replied that such standards to trigger additional development are typically described in detail within the Recreation Management Plan, which will be developed once the needs analysis has been completed.

Cathy Hodges asked who makes up the PDEA team. Mark Andersen responded that between DWR and the consultant team, approximately 400 staffers are involved in the program. The Facilitator added that the PDEA will contain a list of all those who have worked on the document.

Mike Melanson with MWD complimented Russ on his concise and thorough presentation on cumulative effects. He asked for clarification on DWR's planned approach to development of alternatives necessary for an EIR if settlement is not reached. Russ responded that in the case of non-settlement, DWR would need to release a supplemental EIR. Mike asked at what point DWR would make the decision to separate the NEPA/CEQA documents. Ward replied that FERC is increasingly cool to the idea of a joint document, so DWR will probably prepare concurrent documents. Barbara McDonnell added that FERC would not want non-jurisdictional issues included in the NEPA document; however, as the lead agency, DWR would definitely need to include settlement PM&Es in the CEQA analysis.

## **Meeting Summary and Action Items – October 28, 2003**

### *Work Group Meeting Abstracts*

The Facilitator informed participants that abstracts covering work group meetings held since the last Plenary Group meeting are included with the meeting agenda (Attachment 12). More detailed work group meeting summaries are posted on the Oroville Facilities Relicensing web site. The Facilitator reminded participants that revisions or corrections to Plenary Group meeting summaries are to be submitted directly to her.

### *Action Items – October 28, 2003 Plenary Group Meeting*

The Facilitator reviewed the status of action items from the October 28, 2003 Plenary Group meeting as follows:

**Action Item #140:** Describe the relationship between the PDEA development and the collaborative process.

**Status:** Completed

**Action Item #141:** Continue discussion of cumulative effects analysis effort.

**Status:** Completed

**Action Item #142:** Review correspondence between Butte County and DWR related to the draft cumulative effects analysis guidance document.

**Status:** Ralph Torres informed participants that since the last Plenary Group meeting, DWR has received additional letters. DWR staff will be scheduling a meeting with Butte County representatives to discuss the correspondence.

**Action Item #143:** Provide DWR with specific questions related to trails and cumulative impacts in advance of ORAC meeting.

**Status:** Cathy Hodges stated that Dan Peterson with DWR declined to put the issue on ORAC's meeting agenda. Ralph Torres said he would look into the situation.

### **Next Steps**

The next Plenary Group meeting is scheduled for Tuesday, January 27, 2004. The time and location of the meeting will be determined once the agenda has been set. Rick Ramirez reiterated his suggestion of a Sacramento location with call-in capabilities. The Facilitator replied that next month's meeting would include a presentation from the Recreation and Socioeconomics Work Group's on its recommended RAs, which is important to local participants. Cathy Hodges agreed and said she would rather see the meeting take place in Oroville. The Facilitator indicated it would be a day meeting so that agency representatives could participate, and the Plenary Group agreed to begin the meeting in the afternoon, after the lunch hour. The Facilitator suggested that the February meeting take place in Sacramento to accommodate the agency representatives that routinely drive from Sacramento to attend Oroville meetings.

Several participants requested DWR describe the process for RAs moving through to settlement, along with the role of the Plenary and Settlement Groups. Patrick Porgans feels the process is inconsistent with what was outlined in DWR's Initial Information Package dated January 2001.

Michael Pierce distributed copies of a letter sent to DWR by Bruce Alpert with the Butte County Counsel's office (Attachment 13). Michael Pierce asked how DWR intends to evaluate additional RAs that have not yet been submitted. Russ responded that any additional RAs received would be evaluated with the understanding that time for analysis is rapidly shrinking. He added that under CEQA, DWR must disclose how submitted RAs were addressed. Michael asked whether incomplete study plans would hinder DWR's efforts. Russ replied that the application will be filed with FERC in January 2005 and DWR expects study plans to be completed by summer 2004.

Eric Zigas commented that he expects to submit some revised RAs and asked for the preferred submittal process. Russ replied that revised RAs should be submitted at the work group level. Mark Andersen added that for tracking purposes, it is important the submittal follow the same process as used for the other RAs.

Scott Lawrence asked how RAs on the "settlement list" would be evaluated. Ward Tabor responded that the PDEA is "programmatic" in nature and that a supplemental process may be needed to evaluate specific RAs identified during settlement negotiations. Mark Andersen mentioned that if an RA were not within FERC's jurisdiction, it would not be included in the NEPA document; however, it will be included in the CEQA document.

The Facilitator distributed clean copies of the revised Process Protocols accepted at the last Plenary Group meeting (Attachment 14).

### **Action Items**

The following action items identified by the Plenary Group include a description of the action, the participant responsible for the action, and the due date.



**Action Item #144:** Describe the process for moving RAs through to settlement, including the role of both the Settlement Group and the Plenary Group.

**Responsible:** DWR

**Due Date:** January 27, 2004

**Action Item #145:** Send LWG-29 back to the LUWG for further consideration.

**Responsible:** DWR

**Due Date:** January 26, 2004

#### **Carry Over Action Items**

**Action Item #142:** Review correspondence between Butte County and DWR related to the draft cumulative effects analysis guidance document.

**Status:** DWR staff will be scheduling a meeting with Butte County representatives to discuss the correspondence.

**Action Item #143:** Provide DWR with specific questions related to trails and cumulative impacts in advance of ORAC meeting.

**Status:** Cathy Hodges stated that Dan Peterson with DWR declined to put the issue on ORAC's meeting agenda. Ralph Torres said he would look into the situation.